

Representative Brad J. Galvez proposes the following substitute bill:

CHILD CARE AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brad J. Galvez

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions of the Utah Health Code and Title 53A, Chapter 3, Local School Boards, relating to child care.

Highlighted Provisions:

This bill:

- defines terms;
- narrows exemptions from child care licensing requirements for child care provided at or by a public school or school district;
- prohibits an educational institution that is regulated by the boards of education of this state, or a public school, from operating a child care program or a preschool;
- provides exceptions to the preceding paragraph;
- amends provisions of Title 53A, Chapter 3, Local School Boards, to conform with the provisions of this bill; and
- makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2011.



Utah Code Sections Affected:

AMENDS:

26-39-102, as last amended by Laws of Utah 2008, Chapter 111

26-39-403, as renumbered and amended by Laws of Utah 2008, Chapter 111

53A-3-417, as last amended by Laws of Utah 2004, Chapter 171

ENACTS:

26-39-405, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **26-39-102** is amended to read:

26-39-102. Definitions.

As used in this chapter:

(1) "After school program" means child care provided only after regular school hours:

(a) by a public school or school district; or

(b) under contract with a public school or school district, if the public school or school district accepts responsibility and oversight for the child care.

~~[(1)]~~ (2) "Child care" means continuous care and supervision of five or more qualifying children, that is:

(a) in lieu of care ordinarily provided by a parent in the parent's home;

(b) for less than 24 hours a day; and

(c) for direct or indirect compensation.

~~[(2)]~~ (3) "Child care program" means a child care facility or program operated by a person who holds a license or certificate issued in accordance with this chapter.

(4) "Child study program" means child care provided in connection with a course of study or program, related to the education or study of children, that is provided only to students of a public high school:

(a) by a public high school; or

(b) under contract with a public high school, if:

(i) the child care is provided at the public high school; and

(ii) the public high school accepts responsibility and oversight for the child care.

~~[(3)]~~ (5) "Committee" means the Child Care Licensing Advisory Committee, created in

Section 26-39-201.

(6) "Employee-based day care" means child care provided only to a child of an employee of a school district or a child of a student of a school district:

(a) by a public school or school district; or

(b) under contract with a public school or school district, if the public school or school district accepts responsibility and oversight for the child care.

(7) "Extended day kindergarten" means child care provided as part of an extended day kindergarten program:

(a) by a public school or school district; or

(b) under contract with a public school or school district, if the public school or school district accepts responsibility and oversight for the child care.

(8) "Head Start program" means child care provided as part of a Head Start program operated pursuant to the Head Start Act, 42 U.S.C. Secs. 9831 and 9836a, as amended.

(9) "Program for children with a disability" means child care provided to a group of children, the majority of whom have a disability:

(a) by a public school or school district; or

(b) under contract with a public school or school district, if the public school or school district accepts responsibility and oversight for the child care.

(10) "Public high school" means a public school, including an alternative school, that provides education to qualifying children for any grade from tenth grade through twelfth grade.

[~~(4)~~] (11) "Public school" means:

(a) a school, including a charter school, that:

(i) is directly funded at public expense; and

(ii) provides education to qualifying children for any grade from first grade through twelfth grade; or

(b) a school, including a charter school, that provides:

(i) preschool or kindergarten to qualifying children, regardless of whether the preschool or kindergarten is funded at public expense; and

(ii) education to qualifying children for any grade from first grade through twelfth grade, if each grade, from first grade to twelfth grade, that is provided at the school, is directly funded at public expense.

88 ~~[(5)]~~ (12) "Qualifying child" means a person who is:

89 (a) (i) under the age of 13; or

90 (ii) under the age of 18, if the person has a disability; and

91 (b) a child of:

92 (i) a person other than the person providing care to the child;

93 (ii) a licensed or certified residential child care provider, if the child is under the age of
94 four; or

95 (iii) an employee or owner of a licensed child care center, if the child is under the age
96 of four.

97 ~~[(6)]~~ (13) "Residential child care" means child care provided in the home of a provider.

98 (14) "Title I program" means a program that is funded pursuant to Title I of the
99 Elementary and Secondary Education Act of 1965, 20 U.S.C. Sec. 6301, et seq., as amended.

100 Section 2. Section **26-39-403** is amended to read:

101 **26-39-403. Exclusions from chapter -- Criminal background checks by an**
102 **excluded person.**

103 (1) The provisions and requirements of this chapter do not apply to:

104 (a) a facility or program owned or operated by an agency of the United States
105 government;

106 (b) group counseling provided by a mental health therapist, as defined in Section
107 58-60-102, who is licensed to practice in this state;

108 (c) a health care facility licensed pursuant to Title 26, Chapter 21, Health Care Facility
109 Licensing and Inspection Act;

110 (d) care provided to qualifying children by or in the homes of parents, legal guardians,
111 grandparents, brothers, sisters, uncles, or aunts;

112 (e) care provided to qualifying children, in the home of the provider, for less than four
113 hours a day or on a sporadic basis, unless that child care directly affects or is related to a
114 business licensed in this state;

115 (f) care provided to qualifying children, as ~~[part of a course of study at or a program~~
116 ~~administered by an educational institution that is regulated by the boards of education of this~~
117 ~~state;]~~ follows:

118 (i) an after school program;

119 (ii) employee-based day care;
120 (iii) extended day kindergarten;
121 (iv) a Head Start program;
122 (v) a program for children with a disability;
123 (vi) a Title I program;
124 (vii) a child study program;
125 (viii) by a private education institution that provides education in lieu of that provided
126 by the public education system[;]; or
127 (ix) by a parochial education institution;
128 (g) care provided to qualifying children by a public or private institution of higher
129 education, if the care is provided in connection with a course of study or program, relating to
130 the education or study of children, that is provided to students of the institution of higher
131 education;
132 ~~[(h) care provided to qualifying children at a public school by an organization other~~
133 ~~than the public school, if:]~~
134 ~~[(i) the care is provided under contract with the public school or on school property; or]~~
135 ~~[(ii) the public school accepts responsibility and oversight for the care provided by the~~
136 ~~organization;]~~
137 ~~[(i)]~~ (h) care provided to qualifying children as part of a summer camp that operates on
138 federal land pursuant to a federal permit;
139 ~~[(j)]~~ (i) care provided by an organization that:
140 (i) qualifies for tax exempt status under Section 501(c)(3) of the Internal Revenue
141 Code;
142 (ii) is provided pursuant to a written agreement with:
143 (A) a municipality, as defined in Section 10-1-104, that provides oversight for the
144 program; or
145 (B) a county that provides oversight for the program; and
146 (iii) is provided to children who are over the age of four and under the age of 13; or
147 ~~[(k)]~~ (j) care provided at a residential support program that is licensed by the
148 Department of Human Services.
149 (2) A person who is excluded, under Subsection (1), from the provisions and

requirements of this chapter, shall conduct a criminal background check on all of the person's employees who have access to a qualifying child to whom care is provided by the person.

Section 3. Section **26-39-405** is enacted to read:

26-39-405. Schools prohibited from operating a child care program or preschool
-- Exceptions.

(1) Except as provided in Subsection (2), an educational institution that is regulated by the boards of education of this state, or a public school, may not:

(a) operate a child care program or a preschool; or

(b) allow the operation of a child care program or a preschool at the educational institution or public school.

(2) Subsection (1) does not prohibit:

(a) an institution described in Subsection (1) or a public school from operating:

(i) a child care program or preschool if the child care program or preschool is:

(A) an after school program;

(B) employee-based day care;

(C) extended day kindergarten;

(D) a Head Start program;

(E) a program for children with a disability; or

(F) a Title I program; or

(ii) the Upstart program online; or

(b) a child study program from being operated by or at a public high school.

Section 4. Section **53A-3-417** is amended to read:

53A-3-417. Child care centers in public schools -- Requirements -- Availability -- Compliance with state and local laws.

(1) (a) Upon receiving a request from a community group [~~such as~~], including a community council, local PTA, or parent/student organization, a local school board may authorize the use of a part of any school building in the district to provide child care services for school aged children, if the provision of child care services is permitted under Section 26-39-405.

(b) (i) The school board shall provide written public notice of its intent to authorize a child care center.

(ii) The board shall file a copy of the notice with the Office of Child Care within the Department of Workforce Services and the Department of Health.

(2) (a) Establishment of a child care center in a public school building is contingent upon the local school board determining that the center will not interfere with the building's use for regular school purposes.

(b) The decision shall be made at the sole discretion of the school board.

(c) A school board may withdraw its approval to operate a child care center at any time if it determines that such use interferes with the operation or interest of the school.

(d) The school district and its employees and agents are immune from any liability that might otherwise result from a withdrawal of approval if the withdrawal was made in good faith.

(3) (a) The board shall charge a commercially reasonable fee for the use of a school building as a child care center so that the district does not incur an expense.

(b) The fee shall include ~~[but not be limited to]~~ costs for utility, building maintenance, and administrative services supplied by the school that are related to the operation of the child care center.

(4) (a) Child care service may be provided by governmental agencies other than school districts, nonprofit community service groups, or private providers, if the provision of child care services is permitted under Section 26-39-405.

(b) If competitive proposals to provide child care services are submitted by the entities listed in Subsection (4)(a), the board shall give preference to the private provider and nonprofit community service groups so long as their proposals are judged to be at least equal to the proposal of the governmental agency.

(c) It is intended that these programs function at the local community level with minimal state and district involvement.

(5) It is the intent of the Legislature that providers not be required to go through a complex procedure in order to obtain approval for providing the service.

(6) (a) Child care centers within a public school building shall make their services available to all children regardless of where the children reside.

(b) If space and resources are limited, first priority shall be given to those who reside within the school boundaries where the center is located, and to the children of teachers and

other employees of the school where the child care center is located.

(c) Second priority shall be given to those who reside within the school district boundaries where the center is located.

(7) (a) The school board shall require proof of liability insurance which is adequate in the opinion of the school board for use of school property as a child care center.

(b) A school district participating in the state Risk Management Fund shall require the provider of child care services to comply with the applicable provisions of Title 63A, Chapter 4, Risk Management.

(8) Child care centers established under this section shall operate in compliance with state and local laws and regulations, including zoning and licensing requirements, and applicable school rules.

(9) Except for Subsection (8), this section does not apply to child care centers established by a school district within a public school building if the center offers child care services [~~primarily~~] only to children of employees or children of students of the school district.

Section 5. Effective date.

This bill takes effect on July 1, 2011.